

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

ROCHELLE M. EVANS,

Plaintiff/Employee,

vs.

UNIVERSAL HEALTH SERVICES,

Defendant/Employer,

v.

**EQUAL EMPLOYMENT
OPPORTUNITY COMMISSION**

**CASE NO. 3:09-1114
JUDGE TRAUGER/KNOWLES**

REPORT AND RECOMMENDATION

This matter is before the Court upon Plaintiff's "Request for Dismissal." Docket No. 13. Plaintiff states in pertinent part, "Plaintiff requests that this case be dismissed WITH prejudice." *Id.*

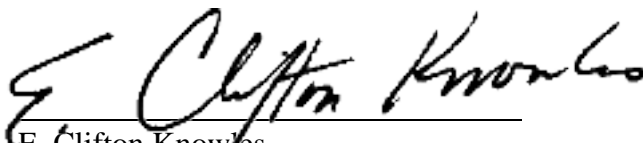
Fed. R. Civ. P. 41(a)(1) provides in relevant part that a plaintiff may dismiss an action without a court order by filing either (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment, or (ii) a stipulation of dismissal signed by all parties who have appeared. The record reflects that Defendant Universal Health Services has previously filed and served an Answer. Docket No. 4. Moreover, Plaintiff has not filed a stipulation of dismissal signed by all parties who have appeared. Thus, Plaintiff cannot dismiss

this action pursuant to Rule 41(a)(1).

Fed. R. Civ. P. 41(a)(2) provides in relevant part, “Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper.”

Plaintiff has expressed a desire to have the instant action dismissed with prejudice. The undersigned, therefore, recommends that Plaintiff’s “Request for Dismissal” (Docket No. 13) be GRANTED pursuant to Fed. R. Civ. P. 41(a)(2).

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh’g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72.


E. Clifton Knowles
United States Magistrate Judge